

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21**

THE AMERICAN BOTTLING COMPANY

Employer

and

SHA-SHA STA. MARIA

Petitioner

Case 21-RD-265144

and

**WHOLESALE DELIVERY DRIVERS,
GENERAL TRUCK DRIVERS,
CHAUFFEURS, SALES,
INDUSTRIAL AND ALLIED
WORKERS, TEAMSTERS LOCAL
848, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS**

Union

DECISION AND DIRECTION OF ELECTION

On August 24, 2020, Petitioner Sha-sha Sta. Maria (Petitioner), an individual, filed the instant petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to decertify Wholesale Delivery Drivers, General Truck Drivers, Chauffeurs, Sales, Industrial and Allied Workers, Teamsters Local 848, International Brotherhood of Teamsters (Union) as the exclusive collective-bargaining representative of a unit of servicing and sales employees (Unit) employed by The American Bottling Company (Employer) out of its facility located in Vernon, California.¹

The parties entered into a Stipulation of Record for Pre-Election Hearing (Stipulation) on September 11, which I approved the same day. The only issue left unresolved by the Stipulation is whether the election will be held manually at the Employer's facility or by mail ballot, given the COVID-19 pandemic. The parties agreed, as part of the Stipulation, that they would each file a written statement outlining the party's position on the appropriateness of a manual or mail ballot election. Additionally, if either party proposed a manual election, they also committed to providing their

¹ All dates 2020 unless otherwise indicated.

position on whether and when a manual election can be safely held; a description of the proposed location of the election, including the size and layout of the room, the location of entrances and exits, and a description of the room's ventilation; a proposal for how a manual election could be conducted consistent with protocols described in *General Counsel Memorandum 20-10* (described more fully below); and the number of employees who have, within the last 3 months, tested positive for COVID-19, exhibited symptoms of COVID-19, and/or were subject to quarantine for any reason related to COVID-19, including but not limited to being in direct contact with someone who tested positive or exhibited symptoms of the virus.

Based on the stipulated record evidence and the relevant Board law, I find the instant petition seeks an election in an appropriate bargaining unit and I have directed an election accordingly. Because of the ongoing COVID-19 pandemic, for the reasons stated below, I have ordered this election to be conducted by mail.

I. The Employer's Operations

The Employer operates a facility located in Vernon, California, in Los Angeles County. The facility is primarily comprised of two main buildings, one containing a 5-line production plant and the other a sales and delivery warehouse. Approximately 564 employees are employed at the facility, of whom approximately 45, account managers and relief account managers (account managers), are in the Unit. Account managers primarily work in the field, away from the Vernon facility, servicing and selling to the Employer's customers. These customers range from in size from national retail chains to small independent stores in the Los Angeles area.

The account managers have continued to work throughout the COVID-19 pandemic as essential employees. During the pandemic, the employees have been provided with personal protective equipment and required to complete daily online health screening questionnaires. All employees, including the account managers, are subject to a temperature screening when they arrive at the facility. Employees have additionally received instruction on proper social distancing, personal hygiene, hand washing techniques, equipment cleaning, and other measures to limit the potential spread of COVID-19.

II. The COVID-19 Pandemic in California and Los Angeles

COVID-19 represents an ongoing public health emergency, and one that has had a significant impact on California in general, and southern California in particular. The ebb and flow of the pandemic is well known at this point. In March, as COVID-19 spread in the United States and the danger it represented became apparent, a restrictive stay-at-home order was put in place in California.² As the initial surge of cases began to fall, and the economic impact of the stay-at-home orders increased, the restrictions were

² <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>

relaxed.³ Unfortunately, this resulted in a resurgence of cases, the re-opening plan was paused, and in some cases restrictions were re-imposed.⁴

As of September 17, COVID-19 infection remains “widespread” in Los Angeles County, the most restrictive category under California’s re-opening plan.⁵ To date, Los Angeles County has recorded over a quarter of a million COVID-19 cases among its residents, and over 6,200 deaths.⁶ This is by far the most cases in the state and represents a third of the total cases in California.⁷ Although Los Angeles is a county with a high population, even adjusted for population Los Angeles County remains in the top 10 counties for infection rates, with 2,541 cases per 100,000 residents.⁸

The Reopening Safer at Work and in the Community for Control of COVID-19 Order, issued by the Health Officer for the County of Los Angeles Department of Public Health, continues to encourage residents to remain in their residences as much as practicable, to limit close contact with others outside their household in both indoor and outdoor spaces, telework as much as possible, and to prohibit gatherings of people who are not part of a single household unless that gathering fits within one of the exceptions to the order.⁹ These local requirements are consistent with Federal and state guidelines that encourage precautions such as avoiding social gatherings and travel, practice good hygiene, maintain at least a 6-foot distance between individuals, and use cloth face coverings when around other people.¹⁰ This is particularly true in regard to COVID-19 because of the risk of presymptomatic or asymptomatic transmission.¹¹

In light of these risks, Centers for Disease Control and Prevention (CDC) guidelines on elections generally encourage officials to “consider offering alternatives to in-person voting if allowed” and that “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others can help reduce the spread of COVID-19.”¹² The CDC further states the virus can survive for a short period on some surfaces and that it is possible to contract COVID-19 by touching a surface or object that has the virus on it and then touching one’s mouth, nose, or eyes,” but “it is unlikely to be spread from domestic or international mail, products or packaging.”¹³ To avoid the unlikely possibility of contracting COVID-19 through the mail,

³ <https://covid19.ca.gov/safer-economy/>

⁴ <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>

⁵ <https://covid19.ca.gov/safer-economy/>

⁶ <https://covid.cdc.gov/covid-data-tracker/#county-map>

⁷ *Id.*

⁸ *Id.*

⁹ http://publichealth.lacounty.gov/media/coronavirus/docs/HOO/2020_09_04_HOO_Safer_at_Home.pdf

¹⁰ How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

¹¹ Evidence Supporting Transmission of Severe Acute Respiratory Syndrome Coronavirus 2 While Presymptomatic or Asymptomatic, https://wwwnc.cdc.gov/eid/article/26/7/20-1595_article

¹² Considerations for Election Polling Locations and Voters, <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>

¹³ Am I at risk for COVID-19 from mail, packages, or products? <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

the CDC simply advises: “After collecting mail from a post office or home mailbox, wash your hands with soap and water for at least 20 seconds or use a hand sanitizer with at least 60% alcohol.”¹⁴

III. Position of the Parties

The Employer and Petitioner submitted written statements in favor of a manual election. The Union maintains a mail ballot election is the preferred method of election during the COVID-19 pandemic.

In stating a preference for a manual election, Petitioner notes that account managers have been trained on how to safely conduct themselves in compliance with CDC guidelines, and they regularly travel to retail locations such as grocery stores where they need to utilize these skills. Petitioner also notes that the Employer already has several mechanisms in place to increase the safety of the workplace, such as daily online health screening and temperature checks.

The Employer’s arguments in favor of a manual election primarily consist of two points: (1) the circumstances surrounding the COVID-19 pandemic have changed and no longer present “extraordinary” circumstances in Los Angeles County; and (2) the Board has a preference for manual elections as mail ballot voting is rife with problems. Consistent with the Stipulation, as a party proposing a manual election, the Employer has provided a proposal for how to conduct a safe manual election during the current pandemic, as follows:

- Two, two-hour polling sessions, one from 8:30 a.m. to 10:30 a.m., and a second from 12:00 p.m. to 2:00 p.m.
- Because of the flexibility inherent in the account managers schedules, the Employer will create a staggered voter release schedule.
- The polling place will be in the sales room, located on the second floor of the production building, a room measuring approximately 30 feet by 60 feet.
- The polling place will be arranged in a manner consistent with GC Memorandum 20-10. Plexiglass barriers will be provided.
- Voters will enter through the main entrance and proceed up the stairs, along a marked path, and line up at six-foot intervals, and will be allowed to enter the polling place one at a time.
- After voting, the voter will follow a marked path and exit the sales room by a separate exit, which leads to stairs and an exit on the opposite end of the facility from the entrance.
- Between voters, the voting booth and all surfaces touched by voters will be disinfected by an observer using wipes, liquid, or aerosol disinfectant provided by the Employer.
- Prior to the election the sales room will be deep cleaned.

¹⁴ Running Essential Errands, <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/essential-goods-services.html>

The Employer acknowledges that, among all employees in the production building, in the last 3 months, four employees have tested positive for COVID-19, but all were quarantined for a least 14 days before returning to the facility and there is no indication it spread to other employees. During the same period an additional six employees have been required to quarantine. In addition, the Employer acknowledges that on September 17, it learned a Unit employee was exposed to a coworker that that tested positive for COVID-19. Although not stated explicitly, it follows that this Unit employee now falls in the second category, employees that have been required to quarantine. Specific to this issue of the quarantined Unit employee, the Employer's position is that a manual election should still be held, but that it should be delayed until the quarantine period for that employee is over, around October 1.

The Union states that it seeks a mail ballot election as the only way to ensure a safe election during a pandemic and that provides Unit employees an opportunity to vote in a timely manner. The Union argues this is particularly true because of the late development that a Unit member must be quarantined due to COVID-19 exposure. As a general matter, the Union argues that the current pandemic creates "extraordinary circumstances" of the type that make a deviation from the Board's preferred manual election procedures appropriate. More specifically, the Union cites to the widespread nature of COVID-19 in Los Angeles County and the many restrictions that remain in place on residents and businesses as evidence that congregating remains discouraged and that a manual election runs counter to the spirit of those restrictions.

The Union also notes that a manual election, which under Board procedures has no provision for absentee voting, has a greater risk of disenfranchisement during a pandemic that requires employees to quarantine. As an example, the Union highlights the situation that developed immediately prior to this decision. On September 17, a non-Unit employee tested positive for COVID-19, and a Unit employee, because of contact with this individual a few days prior, was required to quarantine until September 28. In the Stipulation the parties had requested an election commence no later than September 24. Considering the quarantine, if I were to direct such a manual election it would effectively disenfranchise that individual. The Union additionally notes that simply disregarding the Stipulation and scheduling a manual election later fails to solve the disenfranchisement problem as, if the Unit employee develops symptoms or tests positive, the quarantine will simply spread to others in the Unit.

IV. Analysis

A. Board Standard

Congress has entrusted the Board with a wide degree of discretion in establishing the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives, and the Board in turn has delegated the discretion to determine the arrangements for an election to Regional Directors. *San Diego Gas and Elec.*, 325 NLRB 1143, 1144 (1998); citing *Halliburton Services*, 265 NLRB 1154 (1982); *National Van Lines*, 120 NLRB 1343, 1346 (1958); *NLRB v. A.J. Tower Co.*, 329

U.S. 324, 330 (1946). This discretion includes the ability to direct a mail ballot election where appropriate. *San Diego Gas & Elec.* at 1144-1145. Whatever decision a Regional Director does make should not be overturned unless a clear abuse of discretion is shown. *National Van Lines* at 1346.

The Board's longstanding policy is that elections should, as a rule, be conducted manually. *National Labor Relations Board Casehandling Manual Part Two Representation Proceedings*, Sec. 11301.2. However, a Regional Director may reasonably conclude, based on circumstances tending to make voting in a manual election difficult, to conduct an election by mail ballot. *Id.* This includes a few specific situations addressed by the Board, including where voters are "scattered" over a wide geographic area, "scattered" in time due to employee schedules, in strike situations, or other extraordinary circumstances. *San Diego Gas*, *supra* at 1145.

On May 8, the Board, in an Order denying a request for review in *Atlas Pacific Engineering Company*, Case 27-RC-258742, addressed a mail ballot determination in the context of the COVID-19 pandemic. In its footnote to that Order, the Board noted that *San Diego Gas* contemplated "extraordinary circumstances" beyond the considerations described above, and that circumstances in place at the time – federal, state, and local government directives limiting nonessential travel, requiring the closure of nonessential businesses, and the Regional office conducting the election on mandatory telework – constituted a valid basis for directing a mail ballot election in that case after considering the conditions surrounding a manual election.

On July 6, the General Counsel issued a memorandum titled "Suggested Manual Election Protocols." *Memorandum GC 20-10*. In that memo the General Counsel reiterated that Regional Director's have the authority, delegated by the Board, to make "initial decisions about when, how, and in what manner all elections are conducted." The General Counsel further noted Regional Directors have, and will:

make these decisions on a case-by-case basis, considering numerous variables, including, but not limited to, the safety of Board Agents and participants when conducting the election, the size of the proposed bargaining unit, the location of the election, the staff required to operate the election, and the status of pandemic outbreak in the election locality.

The memorandum then addressed suggested election mechanics, certifications and notifications required to verify a safe election can occur, and the need to include election arrangements in an election agreement. The memo concludes with additional notes regarding the assignment and travel of Board Agents.

B. A Mail Ballot Election is Appropriate

The question of whether the Region can safely conduct a manual election must be considered in every instance during the ongoing COVID-19 pandemic. COVID-19 is a contagious virus, for which there is currently no approved vaccine or antiviral treatment, that often causes a serious, and at times fatal, illness. Although the Board

traditionally conducts manual elections in the workplace, guidelines currently in place at the Federal, state and county level recommend that individuals avoid unnecessary social contact and conduct business remotely when possible. Under these circumstances ordering a mail election, in a case where it would not normally be considered, may be the appropriate option.

Here, the Employer argues I should direct a manual election because: (1) the circumstances surrounding the COVID-19 pandemic have changed and no longer present “extraordinary” circumstances; and (2) the Board has a preference for manual elections as mail ballot voting is rife with problems. In regard to the first argument, I do not agree with some of the Employer’s assertions regarding reopening, and that the current circumstances in Los Angeles County somehow represent a return to normal. It argues that “Grocery Stores, Supermarkets, Certified Farmers’ Markets, Farm and Produce Stands, Food Banks, Convenience Stores, Wholesale Clubs, and Pharmacies” have reopened in Los Angeles County. Many of these facilities have not reopened under the California reopening plan but remained open throughout the pandemic precisely because they are essential.

Regarding the other establishments listed by the Employer, it is correct that the restrictions placed on these are not as severe as in the earlier states of the pandemic. However, I find the restrictions that do remain in place in Los Angeles County, described in detail in the document cited by the Employer, are more indicative of the current state of the pandemic. Recreation areas allowed to be open are almost exclusively limited to outdoor activities, many indoor activities for groups remain restricted and indoor dining is not allowed at restaurants. While a category of “lower-risk retail stores” have been allowed to re-open, and fitness centers are allowed to operate with restrictions, to suggest that Los Angeles County has returned to any semblance of normalcy greatly overstates the situation. As noted, California currently categorizes COVID-19 infection as “widespread” in Los Angeles County, the most restrictive category under the re-opening plan. To the extent the Employer attempts to create a distinction between the instant case and cases where the Board has found “extraordinary circumstances” were present because of the pandemic, I am unconvinced.

Regarding the Employer’s second argument, I agree with the Employer that the Board has a longstanding preference for manual elections. Some of the concerns the Employer has raised regarding mail ballot elections are concerns the Board has referred to at points. However, these concerns are part of the reason manual elections are the preferred method of conducting an election and mail ballot elections are only conducted under certain circumstances. I agree that I would not order a mail ballot election in this case under normal circumstances, but I do not find the Employer’s argument regarding the risks of mail ballot voting compelling during a pandemic that presents us with truly extraordinary circumstances.

Ultimately, a manual election requires substantial interpersonal interaction, and during the current pandemic that interaction generates risk. Here, the Employer has created a proposal for an election that mitigates this risk by implementing social

distancing, disinfecting, physical barriers, and other strategies. There is nothing in the Employer's proposal that is flawed, and indeed it is consistent with the protocols outlined in *Memorandum GC 20-10*, but it merely mitigates risk. With respect to the inevitable interactions and risk of exposure necessitated by a manual election, party representatives, the observers, and the Board agent usually would gather for approximately 15 to 30 minutes for the pre-election conference, including inspection of the voting area. The Board agent and observers would need to share the same indoor space for a period of at least 4 hours during the polling periods, plus the vote count. The observers would need to check in voters on the voter list, in a process intended to allow for visibility of the checked list to both observers and the Board agent. Board agents often need to assist voters with placing their ballots in challenged ballot envelopes and completing the necessary information on the envelopes. The Board agent must provide a ballot to each voter, which each voter must then mark in a voting booth and then place into one shared ballot box. The Board agent must also count the ballots cast by all voters at the end of the election, which is typically done in the same voting area, with the observers, party representatives, and other employees who wish to attend. I recognize that *Memorandum GC 20-10* provides suggestions to mitigate risk, but some aspects of a manual election, such as the Board agent and observers sharing an indoor space for hours, are simply unavoidable in a manual election.

Many of the above considerations are applicable to many cases, and indeed I have directed mail ballot elections in other cases involving employers in Los Angeles County due to the widespread nature of COVID-19. Specific to this case, I also rely on the recent quarantine of a Unit employee as an additional factor that strongly favors a mail ballot election. Put simply, it is undisputed that directing a manual election at the date selected by the parties will disenfranchise at least one Unit employee. A mail ballot avoids this issue. I do not find that the Employer's proposal of simply postponing a manual election to a later date resolves the problem, as it is impossible to know what the illness or quarantine situation will be in early or even mid-October. Specific evidence of disenfranchisement exists in this case and it can be avoided by directing a mail ballot election.

I find those circumstances, including the current nature of the COVID-19 pandemic in Los Angeles County and the existence of an active quarantine in the Unit create an extraordinary circumstance. For the reasons stated, I am directing a mail ballot election.

CONCLUSIONS

I have considered the record evidence and the arguments of the parties, and I conclude that it is appropriate to hold an election among the employees in the petitioned-for Unit.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.¹⁵
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute an appropriate bargaining within the meaning of Section 9(b) of the Act:

Included: All full-time and regular part-time Account Managers and Relief Account Managers employed by the Employer at its facility located at 3220 East 26th Street, Vernon, California.

Excluded: All other employees, including seasonal and temporary employees, office clerical employees, managerial employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by **WHOLESALE DELIVERY DRIVERS, GENERAL TRUCK DRIVERS, CHAUFFEURS, SALES, INDUSTRIAL AND ALLIED WORKERS, TEAMSTERS LOCAL 848, INTERNATIONAL BROTHERHOOD OF TEAMSTERS.**

A. Election Details

The election will be conducted by mail. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit at **2:30 p.m. on Thursday, September 24, 2020.** Ballots will be mailed to voters by the National Labor Relations Board, Region 21. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

¹⁵ During the hearing the parties stipulated to the following commerce facts:

The Employer, a Delaware corporation with a facility located at 3220 East 26th Street, Vernon, California, the only facility involved in this matter, is engaged in the sale and distribution of soft drink products. Within the past 12 months, a representative period., the Employer sold products valued in excess of \$50,000 which it shipped directly to customers located outside the State of California. Accordingly, the Employer is engaged in commerce within the meaning of the Act and is subject to the jurisdiction of the Board. The Employer is an employer engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Thursday, October 1, 2020**, as well as those employees who require a duplicate ballot, should communicate immediately with the National Labor Relations Board by either calling the Region 21 office at (213) 894-5254 or our national toll-free line at (844) 762-NLRB ((844) 762-6572).

The ballots will be commingled and counted by the Region 21 office at **10:00 a.m. on Friday, October 16, 2020**. In order to be valid and counted, the returned ballots must be received by the Region 21 office prior to the counting of the ballots.

The parties will be permitted to participate in the ballot count, which may be held by videoconference. If the ballot count is held by videoconference, a meeting invitation for the videoconference will be sent to the parties' representatives prior to the count. No party may make a video or audio recording or save any image of the ballot count.

B. Voting Eligibility

Eligible to vote are those employees in the unit who were employed during the **payroll period ending September 11, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote by mail as described above.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **Tuesday, September 22, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

The list must be filed electronically with the Region and served electronically on the other parties named in this decision. The list must be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on E-File Documents, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election included with this decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 10 business days after a final disposition of the proceeding by the Regional

Director. Accordingly, a party is not precluded from filing a request for review of this decision after the elections on the grounds that it did not file a request for review of this Decision prior to the elections. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations. Unless the party filing the request for review does not have access to the means for filing electronically or filing electronically would impose an undue burden, a request for review must be E-Filed through the Agency's website. A request for review may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board. If a request for review of a pre-election decision and direction of election is filed within 10 business days after issuance of the decision and if the Board has not already ruled on the request and therefore the issue under review remains unresolved, all ballots will be impounded. Nonetheless, parties retain the right to file a request for review at any subsequent time until 10 business days following final disposition of the proceeding, but without automatic impoundment of ballots.

Dated at Los Angeles, California, this 18th day of September, 2020.



William B. Cowen, Regional Director
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